

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NGOC ANH PHAN and LONG PHAN,)
v.)
NATIONAL RAILROAD PASSENGER)
CORPORATION d/b/a AMTRAK,)
Plaintiffs,)
Defendant.)
No. 3:18-cv-05784-BHS
[PROPOSED]
JOINT PRETRIAL ORDER

The parties have preliminarily conferred regarding the Pretrial Order. After the submission of this Pretrial Order, the parties anticipate conferring further in an effort to streamline the trial and may submit an Amended Pretrial Order either before or after the Pretrial Conference on October 17, 2022. This pre-trial order is being submitted in accordance with this Court's order of May 3, 2022.

JURISDICTION

This Court has jurisdiction over this action under 28 U.S.C. § 1331 as Amtrak is a congressionally incorporated corporation with over half its capital stock owned by the federal government. Additionally, this Court has jurisdiction over this action under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district.

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CLAIMS AND DEFENSES

Plaintiff will pursue the following claims at trial:

1. Common Law Negligence
2. Amtrak is liable as a Common Carrier
3. There should be no evidence or argument as to expenses incurred by Plaintiffs arising from the incident in question, and no instruction should be given on accord and satisfaction and setoff.

Defendant will pursue the following affirmative defenses and/or claims:

1. Defendant Amtrak disagrees with Plaintiffs' statement of their claims, but it will not contest liability for compensatory damages proximately caused by the derailment. Amtrak also disputes the severity, nature, and extent of Plaintiffs' claimed damages.
2. To the extent certain expenses incurred by Plaintiffs arising from the incident in question have been paid by Amtrak, any recovery by Plaintiffs should be reduced to the extent of such payments pursuant to the doctrines of accord and satisfaction and set off.
3. To avoid confusion with respect to medical expenses, the jury should be advised that certain medical expenses have been paid by Amtrak.

ADMITTED FACTS

The following facts are admitted by the parties:

1. On December 18, 2017, Plaintiff Ngoc Anh Phan was a passenger on Amtrak Cascades Train 501.
2. On that date, Defendant Amtrak Cascades Train 501 was traveling southbound from Seattle, Washington toward Portland, Oregon.
3. Amtrak Cascades Train 501 had a lead locomotive, a power rail car, 10 passenger cars, a baggage rail car, and a rear locomotive.
4. AMTK 7424 was the second coach class passenger car in Amtrak Cascades Train 501.
5. At approximately 7:33 a.m. on December 18, 2017, Amtrak Cascades Train 501

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1 traveled on the Point Defiance Bypass section of the Lakewood Subdivision, a section of trackage
2 over which Amtrak had operating rights.

3 6. There is a descending grade approaching the curve on the Lakewood Subdivision
4 that crosses over Interstate 5 at track milepost 19.8.

5 7. The curve located at Milepost 19.8 had a speed limit of 30 miles per hour.

6 8. Amtrak Cascades Train 501 was traveling approximately 78 miles per hour when
7 it entered the curve.

9 9. Amtrak Cascades Train 501 derailed through the curve, and Plaintiff Ngoc Anh
10 Phan was a passenger aboard the train during the derailment.

11 10. During the derailment, AMTK 7424 traversed along the east (left) side of the track
12 down the embankment and onto the highway coming to rest under the bridge overpass on its roof
13 with its lead end facing north.

14 11. At the time of the derailment, Plaintiff Ngoc Anh Phan was married to Plaintiff
15 Long Phan.

16 12. Amtrak has agreed to pay Plaintiff Ngoc Anh Phan's past medical expenses
17 related to the derailment so those expenses are not in dispute in this case.

19 **PLAINTIFF'S DISPUTED FACTS**

20 1. As a result of the derailment, Plaintiff Ngoc Anh Phan sustained injuries of a
21 personal, emotional, and pecuniary nature, including future medical care and loss of enjoyment
22 of life, pain, anxiety, distress, emotional trauma, and physical impairment.

23 2. As a result of the derailment, Plaintiff Long Phan sustained a loss of the
24 consortium of his wife, Plaintiff Ngoc Anh Phan.

DEFENDANT'S DISPUTED FACTS

1. Amtrak disputes the nature, severity, and permanency of the Plaintiffs' alleged injuries as a result of the derailment as well as Plaintiff's claimed damages, including past and future economic and non-economic damages.

ISSUES OF LAW

Defendant Amtrak does not contest liability for Plaintiffs' injuries caused by the derailment on Amtrak 501 on December 18, 2017. The issues at trial are (a) the nature and extent of Plaintiffs' injuries; and (b) the nature and extent of the harms and losses resulting from Plaintiffs' injuries.

EXPERT WITNESSES

A. On behalf of Plaintiffs, the following will testify:

Name	Address	Brief description of the testimony
Cloie Johnson	c/o Hildebrand, McLeod & Nelson LLP	Will testify regarding damages issues consistent with her reports and Life Care Plan
James Mills	c/o Hildebrand, McLeod & Nelson LLP	Will testify regarding damages consistent with his reports, including his Economic Impact Reports

B. On behalf of Defendant, the following will testify:

Amtrak is not calling any retained experts in its case in chief, but will cross examine Plaintiff's experts and treating providers. Amtrak reserves the right to call any of plaintiffs' treating providers in its case.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

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1 A. On behalf of Plaintiff, the following will testify:

Name	Address	Brief description of the testimony
Ngoc Anh Phan	c/o Hildebrand, McLeod & Nelson LLP	Will testify regarding the derailment scene, the impact of the derailment on Ms. Phan and Ms. Phan's injuries and damages.
Long Phan	c/o Hildebrand, McLeod & Nelson LLP	Will testify regarding the derailment scene, the impact of the derailment on Ms. Phan and Ms. Phan's injuries and damages.
Nu Anna Nguyen- Pham	c/o Hildebrand, McLeod & Nelson LLP	Will testify regarding Ms. Phan's and Mr. Phan's injuries and damages.
Bridget Cross	c/o Miller Nash LLP	Will testify about Ms. Phan injuries and damages and impact on Ms. Phan's work.
Colleen Parton Klein	PO Box 65451, University Place, WA 98464	Will testify about the conditions, impact, and scene of the derailment as well as Ms. Phan's injuries and damages
Crista Johnson	3834 Southlake Drive SE, Lacey, WA 98503	Will testify about the conditions, impact, and scene of the derailment as well as Ms. Phan's injuries and damages.
Juliet Friedl	6218 167th Ave SE Bellevue, WA 98006	Will testify regarding Ms. Phan's and Mr. Phan's injuries and damages.
Maria Nguyen	14049 NW Cornelius Pass Rd. Portland, OR 97231	Will testify regarding Ms. Phan's injuries and damages.
Jennifer Lawlor MD	PM&R Rehab Medicine 1040 NW 22ND Avenue, Suite 320 Portland OR 97210- 3823	Will testify regarding Ms. Phan's injuries and damages.
Aimee Jackson, PT, MS	Therapeutic Associates Physical Therapy 10215 SW Park Way, Suite D Portland, OR 97225	Will testify regarding Ms. Phan's injuries and damages.
T. Scott Woll MD	Rebound Orthopedics & Neurosurgery 200 NE Mother Joseph Place, Suite 210 Vancouver, WA	Will testify regarding Ms. Phan's injuries and damages.

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2	Robert J. Ryan, MD	Virginia Mason Medical Center 1100 Ninth Avenue Seattle, WA 98101	Will testify regarding Ms. Phan's injuries and damages.
3	Trevor Davis, PsyD, ABPP	Pacific Rehabilitation Center 9617 7th Avenue SE Everett, WA 98208	Will testify regarding Ms. Phan's injuries and damages.
4	James Boyer, LMFT, PC	667 NW 112th Ave. Portland, OR 97205	Will testify regarding Ms. Phan's and Mr. Phan's injuries and damages.
5	Audrey Ann Sines, LMHC	1801 D St. Ste. 4 Vancouver, WA 98663	Will testify regarding Ms. Phan's injuries and damages.
6	Shannon Flynn	c/o Seyfarth Shaw, LLP	Will testify live or by designation about Ms. Phan's work history following the derailment and other issues related to damages. injuries and damages and work.
7	Jennifer Bowers	c/o Seyfarth Shaw, LLP	Will testify live or by designation about Ms. Phan's work history following the derailment and other issues related to damages. injuries and damages and work.
8	Molly Weibel-Sturm, MA, CDMS	OSC Vocational System, Inc. 10132 NE 185 th Street Bothell, WA 98011	Ms. Weibel-Sturm is vocational rehabilitation counselor who may testify live or by designation regarding the nature and extent of Ms. Phan's alleged injuries and damages.

16 Defendant objects to the extent that Plaintiff's lay witnesses are cumulative
 17 and to Plaintiff's medical and expert witnesses to the extent they are cumulative and to
 18 the extent they exceed the number of witnesses on a given subject under LCR 43(j).

19 B. On behalf of Defendant, the following will testify:
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Name	Address	Brief description of the testimony
Jennifer Lawlor MD	PM&R Rehab Medicine 1040 NW 22ND Avenue, Suite 320 Portland OR 97210-3823	Will testify regarding nature and extent of Ms. Phan's injuries and damages.
Aimee Jackson, PT, MS	Therapeutic Associates Physical Therapy 10215 SW Park Way, Suite D Portland, OR	Will testify regarding nature and extent of Ms. Phan's injuries and damages.

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2	T. Scott Woll MD	Rebound Orthopedics & Neurosurgery 200 NE Mother Joseph Place, Suite 210 Vancouver, WA 98664	May testify regarding nature and extent of Ms. Phan's injuries and damages.
3	Robert J. Ryan, MD	Virginia Mason Medical Center 1100 Ninth Avenue Seattle, WA 98101	May testify regarding nature and extent of Ms. Phan's injuries and damages.
4	Lauretta Young, MD	MCN - Portland 9600 SW Oak St #350, Tigard, OR 97223	May testify regarding nature and extent of Ms. Phan's injuries and damages.
5	Trevor Davis, PsyD, ABPP	Pacific Rehabilitation Center 9617 7th Avenue SE Everett, WA 98208	Will testify regarding nature and extent of Ms. Phan's injuries and damages.
6	James Boyer, LMFT, PC	667 NW 112th Ave. Portland, OR 97205	Will testify regarding nature and extent of Ms. Phan's and Mr. Phan's injuries and damages.
7	Audrey Ann Sines, LMHC	1801 D St. Ste. 4 Vancouver, WA 98663	Will testify regarding nature and extent of Ms. Phan's injuries and damages.
8	Sean McNally, MD	5050 Northeast Hoyt Street, Suite 422, Portland, Oregon , 97219	May testify live or by designation regarding relationship between Ms. Phan neck pain, and of cosmetic breast implants
9	Jennifer Bowers	c/o Seyfarth Shaw, LLP	Will testify live or by designation about Ms. Phan's work history following the derailment and other issues related to damages. injuries and damages and work.
10	Bridget Cross	c/o Miller Nash, LLP	Will testify live or by designation about Ms. Phan's work history following the derailment and other issues related to damages. injuries and damages and work.
11	Shannon Flynn	c/o Seyfarth Shaw, LLP	Will testify live or by designation about Ms. Phan's work history following the derailment and other issues related to damages. injuries and

1			damages and work.
2	James Kaylor	Claims Bureau USA P.O.Box 2936 Woburn, MA 01888	Mr. Kaylor or an agent of Claims Bureau USA will testify to authenticate surveillance on plaintiff performed in 2021.
3	Robert Grady	Diligent Investigations, LLC 4207 SE Woodstock Blvd #108 Portland, OR 97206	Mr. Grady will testify to authenticate surveillance on plaintiff performed in July 2021
4	Molly Weibel- Sturm, MA, CDMS	OSC Vocational System, Inc. 10132 NE 185 th Street Bothell, WA 98011	Ms. Weibel-Sturm is vocational rehabilitation counselor who may testify live or by designation regarding the nature and extent of Ms. Phan's alleged injuries and damages.
5	Janis Alger	Pacific Northwest Investigative Agency PO Box 110714 Tacoma, WA 98411	Ms. Alger will testify to authenticate surveillance performed on Plaintiff in April 2022.

EXHIBITS

See Plaintiff's Exhibit List, attached hereto as Exhibit A.

See Defendant's Exhibit List, attached hereto as Exhibit B.

Defendant reserves the right to call witnesses as necessary to authenticate medical records or other documents to the extent Plaintiff maintains authenticity objections to any of Defendant's exhibits. Defendant also reserves the right to call impeachment witnesses.

ACTION BY THE COURT

- (a) This case is scheduled for trial before a jury on November 1, 2022 at 9:00 AM.
- (b) The parties' motions *in limine* were filed on April 11, 2022 and are pending. Defendant has also filed a supplemental motion *in limine* regarding litigation-related stress.
- (c) Trial brief, proposed *voir dire*, jury instructions, agreed neutral statement of the case, and deposition designations will be submitted to the court on or before October 11, 2022.

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1 (d) Pretrial conference will be held on October 17, 2022 at 3:00 P.M.
2 (e) If the Court decides to hold a virtual trial at the time of the pretrial conference,
3 Defendant respectfully reserves the right to move to oppose a virtual trial.
4 (f) Plaintiffs have recently disclosed additional information about Ms. Phan's future
5 vocational plans and intend to serve supplemental information regarding the same,
6 as well as an updated economic report that includes an additional model for future
7 economic damages that is based on her current employment. Defendant has not yet
8 received this supplementation. As a result, Defendant's anticipated deposition
9 designations may need to be revised following receipt of Plaintiffs' supplementation.
10 The parties will work cooperatively to submit agreed deposition designations well in
11 advance of their use at trial, so that any objections can be resolved and final versions
12 of the video deposition designations will be ready for use in Defendant's case prior
13 to the conclusion of Plaintiffs' case.

14 This order has been approved by the parties as evidenced by the signatures of their
15 counsel. This order shall control the subsequent course of the action unless modified by a
16 subsequent order. This order shall not be amended except by order of the court pursuant to
17 agreement of the parties or to prevent manifest injustice.

18 DATED

19 THE HONORABLE BENJAMIN H. SETTLE

20 FORM APPROVED:

21 HILDEBRAND McLEOD & NELSON, LLP

22 By: /s/ Anthony S. Petru
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23 GRUBE OREHOSKI PLLC

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25 Attorneys for Plaintiffs Ngoc Anh Phan and Long Phan

26 [PROPOSED] JOINT PRETRIAL ORDER
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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys and parties of record.

Executed this October 11, 2022 at Oakland, California.

Pursuant to FRCP 5(b), I certify that I am an employee of Hildebrand, McLeod & Nelson, LLP, who are members of the bar of this court and at whose direction this service was made. 

Trembl
Elena Jimenez

Elena Jimenez

[PROPOSED] JOINT PRETRIAL ORDER
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